

Notary Work Group

Meeting Minutes

Tuesday, September 11, 2018

Members in Attendance:

Michael Schlein; Clerk Marilyn Bentley; Delegate Richard Metzger; Denise Pope; Kenneth Krach; Janelle Straszheim; Lydia Williams; M. Clare Schuller; Jean Quattlebaum; Michael Kasnic; Alex Montanio; Rodney Ritter; Kathie Connelly; Bill O'Connell; Josaphine Yuzuik; Marquita Lewis

Members of the Public in Attendance:

Michol Bobb; Adeela Yousufi; Bob Enten

Welcome

Michael Schlein, Co-Chair, called the meeting to order at 1:10PM. He welcomed everyone to the fifth meeting of the 2018 Notary Work Group.

Introductions

Attendance was taken by Michael Schlein and a quorum was established.

Approval of Minutes from August 14, 2018 Meeting

Michael Schlein, Co-Chair, asked the Work Group members if everyone reviewed the August 14, 2018 minutes. Members acknowledged they did. He asked if there were any edits. No edits were suggested. Michael Schlein asked if there was a motion to approve the minutes. Janelle Straszheim made a motion to approve. Delegate Richard Metzger seconded the motion. Michael Schlein asked members to vote. The motion to approve the minutes was passed unanimously.

Maryland Notary Law, Regulations, and Handbook: Comments/Suggestions

Michael Schlein asked if the members reviewed the law, regulations, and handbook and had any suggestions or comments. None were made.

Michael Schlein asked the Subgroups to report their progress.

Michael Schlein asked the Liability Subgroup to present their report.

Liability including: Record Keeping/Privacy/Liability of the Notary Report:

Liability Subgroup Member, Michael Schlein, reported on behalf of Reporter Toby Musser. He reported a summary of work conducted by the Liability subgroup. It was reported that the subgroup had four (4) suggestions:

1. Make providing a business address the requirement for public records.
2. Require that the notary submit a home address but only make it public record if a business address is not provided.
3. Create a notary directory that's available online for the public to make finding a notary easier.
4. Have notaries collecting business addresses instead of home addresses as well.

Michael Schlein invited comments from the Work Group.

Clerk Marilyn Bentley: The Clerk of the Court keeps the home address of each notary on a card. This is done for record keeping purposes, tracking who is sworn in. It is public information should someone request it.

Bill O'Connell: Asked about the current process by which one can obtain a notary's home address and whether or not the Secretary of State knows who is obtaining the information. He also inquired about making a regulation regarding the Public Information Act regarding notary information.

Michael Schlein: People obtain a notary's home address mostly by emailing or calling the office. However, we do not always know the name of the person requesting it, even if the request is received via email. The name of the requestor

is not required to obtain the notary's information. We do not publish home addresses on our website though; someone must contact us to ask for a home address.

Josie Yuzuik: Shared that the Secretary of State already has Public Information Act regulations.

Marquita Lewis: Shared that the Secretary of State receives weekly requests from 2 vendors. Those vendors request a list of new and renewing notaries that were issued commissions, including their home address. This is for the purpose of selling them notary supplies.

Bill O'Connell: Having work address as public information could cause issue with identifying someone when getting commissioned because the work address does not appear on a government issued photo ID.

Michael Schlein: Would need to determine how to provide the home address to the Clerk while shielding that from the public, similar to other deed shielding rules that exist.

Clare Schuller: Asked about the ability to serve a notary that does not have a Maryland home or work address.

Michael Schlein: We do already have some notaries that do not have a home or work address in Maryland but still work here and are licensed as notaries. Certain people may live out of state and their office may be out of state but they still work in Maryland. Title Insurance Producers was given as an example. They can be licensed in Maryland, and other neighboring states, but not have an office in Maryland while still working here as a licensed Title Insurance Producer.

Ken Krach: Asked about jurisdictional issues regarding a notary that does not live in Maryland.

Michael Schlein: Explained that a notary must be physically present in Maryland to notarize as a Maryland notary so if a crime or other issue occurred during a notarization, the county in which the act occurred would have jurisdiction over the matter. Referenced a point made by Michael Chodos that for remote notarizations, the remote notarization is deemed to have occurred in the state in which the notary is commissioned.

Denise Pope: The Secretary of State, if work addresses became public information, would now need to worry about notaries forgetting to notify us of their new work address.

Michael Schlein: Agreed with Denise Pope and noted that we already have an issue with many notaries that do not notify us of their new home address. The issue of not notifying us of a new address would not be a new one.

Michael Schlein asked the Identity Management Subgroup to present their report.

Identity Management including: Fees/Expenses/Necessary Tools/Education and Testing Requirements Report:

Enforcement Subgroup Reporter, Lydia Williams, summarized their work. She reported that the subgroup last met the day before our prior work group meeting, however, she wanted to report previously unmentioned information regarding the subgroup's work, in particular, Nevada's bonding requirement. Nevada requires that their notaries obtain a \$10,000 bond to become a notary. Nevada also requires an online notary class.

Michael Schlein invited comments from the Work Group.

Bill O'Connell: Discussed the Maryland Insurance Administration's requirement for bonding and the burden posed to Title Insurance Producers and Independent Contractors (TIPIC) to be licensed producers. Ultimately, the bonding requirement for individual TIPICs was removed. The low notary fee that one can charge per notarization would mean that it takes a notary a lot of notarizations to make up the cost of being bonded.

Kathie Connelly: Legislation was proposed, but did not pass, requiring Property Managers to get a surety bond. The amount of the bond would have been a sliding scale based on the amount of properties managed.

Clare Schuller: Even if bonding is required on a sliding scale, there would be a minimum bond amount that a company would require you to get because a lesser bond amount would make it not worth creating the policy. Bonding only covers claims by the State. Errors and Omissions Insurance would be needed to protect the individual.

Michael Schlein asked the Enforcement Subgroup to present their report.

Enforcement including: (including remote mechanisms) /Registration/Name Changes

Enforcement Subgroup Reporter, Alex Montanio, summarized their work. The last discussion of this subgroup continued to focus on enforcement beginning at the application stage. Suggestions are as follows:

1. The subgroup believes that outsourcing the background checks would make it more efficient. Also, companies that specialize in this are better at finding the out of state criminal records.
2. Even though Senators approve applications, there could be criteria established that disqualifies an applicant.
3. Develop a list for “good cause” to remove a notary. Texas’ list of what constitutes “good cause” was mentioned as an example.
4. Make it obvious that a notary seal is a public seal, as it relates to criminal law and prosecuting those that misuse their notary seal.

Michael Schlein invited comments from the Work Group.

Bill O’Connell: Mentioned that the Maryland Insurance Administration’s background checks tend to be for owners of companies and are thorough. However, for the average licensee, there is not a background check.

Denise Pope: Nevada requires fingerprinting to become a notary. However, the cost of fingerprinting to become a notary would raise the fee.

Bill O’Connell: Many years ago, the cost for him to be fingerprinted when becoming an attorney was \$60. Fingerprinting would allow for a comprehensive check to be done on notary applicants.

Rod Ritter: Working in auto sales, he must be fingerprinted and pass a background check. They use a private background check company. It cost him \$202.50 to be fingerprinted and pass a background check. The fingerprinting and background check is good for three (3) years.

Michael Schlein asked the Remote Notarization Subgroup to present their report.

Remote Notarizations including: Cost of Technology/Financial Transactions

Remote Notarization Subgroup Member, Michael Schlein, reported on behalf of Reporter, Nick D’Ambrosia. The subgroup reporter is drafting a report that covers their work and expects to circulate it for the October Work Group meeting. Details left to discuss are the specifics about the plan to move forward and what would be needed to properly regulate a remote notarization sector.

Michael Schlein invited comments from the Work Group.

Ken Krach: Urged the group to take advantage of the remote notary discussions already had. He mentioned that Ohio passed and repealed their law and asked about previous legislation about remote notarization in Maryland.

Bill O’Connell: His understanding is that Ohio put something into the law without thought on its impact and repealed it so that it could be replaced. He believes they are embracing technology, such as blockchain. He mentioned that previous attempts in Maryland regarding remote notarizations attempted to fit new technology into an old law and it did not work; including terms like remote and electronic notarization. There is a need to review everything and create a good law based on other states’ efforts.

Michael Schlein: Explained that electronic notarizations, or e-notarizations, became legal when Maryland’s version of the e-commerce act passed in 1999 or 2000. When the law was passed, no further guidance was given on e-

notarizations. At this time, an e-notarization must be done exactly the same as a traditional notarization, with the exception being that the document can be electronically signed and notarized. Personal appearance is still required.

Bill O'Connell: Prior to this year, electronic notarizations could cause issues because you would have to print the electronically signed and notarized document but it could be viewed as not an original document that must be filed for recording purposes. Electronic recording is now legal per the Uniform Real Property Electronic Recording Act, which passed in 2018. Electronic recording is now happening in Maryland.

Michael Schlein asked the Education and Testing Subgroup to present their report.

Education and Testing

Education and Testing Subgroup Reporter, Kathie Connelly, summarized their work to date. Highlights of the work include:

1. Both new and renewing notaries should be made to take a class and pass a test
2. One must pass the class and test before getting their new or renewal commission. If a renewal fails their test, they must take the new notary class and test and pass that before renewing. If a renewal fails that second test, their renewal should be denied.
3. Creation of a consumer guide is needed. Develop one and make it accessible to the public.
4. Best practice would be to bid the class out to a vendor or vendors.
5. The Secretary of State must administer the class and test in cooperation with the vendor.

Michael Schlein invited comments from the Work Group.

Bill O'Connell: Concurred that education is good and mentioned that the Maryland Insurance Administration farms out the continuing education and testing for TIPICs.

Clare Schuller: The increased standards and increased professionalism brought to being a notary should cause the fee that a notary can charge to increase.

Kathie Connelly: Agreed that it's a given; if a notary must pay more to become a notary, they must be able to charge more per notarization.

Clare Schuller: Mentioned that legislation to raise the notary fee has failed in previous years. There would need to be justifications for raising the fee a notary can charge for their service, which should be easy to come up with.

Michael Schlein: If new requirements to become a notary are enacted, such as education and testing, it should be easy to justify allowing a notary to charge a larger fee. Previous attempts for the notary fee increase were stand-alone items. No increased standards were proposed with the increase in fee for a notary's service.

Bill O'Connell: California allows \$10 per notarization but they also police/audit the notary field.

Denise Pope: Nevada allows a notary to charge \$5 for a first notarization and \$2.50 for each additional notarization.

Michael Schlein asked if there are any recommendations from the group at this time.

Recommendations to Date

Janelle Straszheim: Asked if we could let the member of the public in attendance from the Maryland Bankers Association speak for a few minutes.

Questions/Comments:

Michael Schlein: Asked the work group if there were any additional questions or comments. None were made.

Michael Schlein: Asked the members of the public to introduce themselves and invited comments.

During the Identity Management section, Michael Schlein allowed for comment from Michol Bobb, about Errors & Omissions Insurance. She stated that companies have policies for \$25,000 to \$1,000,000 in coverage but those policies are cheap; with a \$25,000 policy costing about \$10 annually.

Bob Enten: Introduced himself as General Counsel for the Maryland Bankers Association and a partner at Gordon Feinblatt, LLC. He said that remote notarizations is a big issue for the banking industry; bankers want remote notarizations and would be happy to participate in the process. He believes that remote notarization use must be voluntary, that the seal should indicate it is a remote notarization, that a remote notarization cannot effect the validity of an instrument, that a required length of time is needed for record keeping, and that there should be an established fee for remote notarizations.

Michol Bobb: Commented on the discussion about raising the notary fee; nationally, the average fee is about \$5 per notarization. She said that California raised their notary fee to \$15 and Arizona and Indiana raised their notary fee to \$10. Some states do not set a standard fee per notarization or for travel.

Adjournment:

Michael Schlein, Co-Chair, thanked everyone for their efforts.

The meeting adjourned at 2:29 P.M.